STATE OF MICHIGAN

COURT OF APPEALS

PETER MOLITOR,

Plaintiff-Appellant,

v

CHARTER COUNTY OF WAYNE,

Defendant-Appellee,

and

MACHO PRODUCTS, INC., and HECKLER & KOCH, INC.,

Defendants.

UNPUBLISHED
February 21, 2003

No. 238524
Wayne Circuit Court
LC No. 00-038873-NO

Before: Kelly, P.J., and White and Hoekstra, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant Wayne County's motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a police officer employed by defendant Wayne County, was injured in a training exercise. He brought this action alleging, in part, that defendant's failure to train its employees in the use of the protective equipment employed during the exercise was an intentional tort under the Worker's Disability Compensation Act, MCL 418.101 *et seq*. The circuit court granted summary disposition concluding that plaintiff failed to establish an intentional tort under the act.

MCL 418.131(1) provides:

> (1) The right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully

> disregarded that knowledge. The issue of whether an act was an intentional tort shall be a question of law for the court. This subsection shall not enlarge or reduce rights under law.

In *Travis v Dreis & Krump Mfg Co*, 453 Mich 149, 170; 551 NW2d 132 (1996), the Supreme Court held that a deliberate act may be an act of commission or omission, and includes a conscious failure to act. To specifically intend an injury, an employer must have had in mind a purpose to bring about given consequences. *Id.*, 171. Intent to injure will be inferred where the employer has actual knowledge that an injury was certain to occur, under circumstances indicating deliberate disregard of that knowledge. *Id.*, 180. "When an injury is 'certain' to occur, no doubt exists with regard to whether it will occur." *Id.*, 174.

The circuit court determined that although failure to provide training is a deliberate act, and plaintiff presented evidence to create a question of fact regarding actual knowledge and willful disregard, plaintiff failed to show that injury was certain to occur. We agree. Although the training equipment came with a warning that proper training in how to use the equipment was required to avoid injury, plaintiff failed to show that injury was certain to occur in the absence of training. The circuit court properly granted summary disposition under MCR 2.116(C)(10).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Helene N. White
/s/ Joel P. Hoekstra